

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the License of Wiley Green
to Provide Family Child Care.

**ORDER ON MOTION AND
RECOMMENDATION FOR
SUMMARY DISPOSITION**

On January 10, 2005, a Notice of Motion and Motion for Summary Disposition was filed in this matter by Rebecca S. Morrisette, Assistant Hennepin County Attorney. The Motion was filed on behalf of the Hennepin Department of Children, Family and Adult Services ("Agency") and the Department of Human Services ("Department"). The Motion was served by mail upon Wiley Green ("Licensee") at her last known address – 3611 Aldrich Avenue North, Minneapolis MN 55412. Neither the Licensee nor anyone on her behalf has filed any document opposing the granting of the Agency's Motion.

On March 1, 2005, the Administrative Law Judge received notice of a withdrawal of counsel (effective in August, 2004) from Attorney Samuel L. Reid, II, who had been representing the Licensee during the course of these proceedings. Mr. Reid had not been notified of the Motion. The record in this matter closed upon the receipt of that Notice.

Based on all of the proceedings herein, the Administrative Law Judge **RECOMMENDS** that the Commissioner of Human Services issue the following:

ORDERS

IT IS ORDERED that the Agency's Motion for Summary Disposition is **GRANTED**; and

IT IS ORDERED FURTHER that the appeal of Licensee Wiley Green in the matter of the Temporary Immediate Suspension of her license to provide family child care is **DISMISSED, WITH PREJUDICE**.

Dated this 28th day of March, 2005

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

Procedural Background

On January 29, 2004, the Agency recommended that the Commissioner of the Department of Human Services immediately suspend Wiley Green's license to provide family child care. An Order of Immediate Suspension was issued by the Department on February 2, 2004, and Ms. Green filed a timely appeal. The matter was scheduled for hearing before the Administrative Law Judge on March 4, 2004, and was rescheduled later for March 31, 2004. Prior to the scheduled hearing, the parties agreed to an indefinite continuance, which was granted by the Administrative Law Judge, in order for the Commissioner to take action on the Agency's request for a final order regarding the revocation of Ms. Green's license. An Order of Revocation was issued by the Commissioner on August 20, 2004, and Ms. Green did not appeal that Order.

Statutory Authority

Minn. Stat. § 245A.07, subd. 2 provides that the scope of review for an expedited immediate suspension hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the Commissioner's final order under § 245A.08, regarding a licensing sanction issued under subd. 3 following the immediate suspension.

Analysis

Minn. Rule 1400.5500 provides that an Administrative Law Judge may recommend summary disposition of a case when "there is no genuine issue as to any material fact" Minn. R. 1400.5500(K). To obtain a summary disposition, the moving party (the Agency) must establish that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The party opposing summary judgment (the Licensee, if she opposes it) must counter with specific facts sufficient to raise an issue for trial.

In this matter, summary disposition is appropriate because the sole issue is now moot. The Commissioner has already issued an Order for Revocation which Ms. Green did not appeal. Because the Order for Revocation is a "final order" within the meaning of the above-cited statute, there is no need to determine whether the temporary immediate suspension should remain in effect pending a final order. No genuine issues of fact remain because the provider's license has been terminated. Because the issue in the case is moot, the Agency and DHS are entitled to judgment as a matter of law, and summary disposition is appropriate. For that reason, the Administrative Law Judge has recommended that the Commissioner grant summary disposition, with prejudice, in this case.

R.C.L.